

FIRST REGULAR SESSION

SENATE BILL NO. 48

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0494S.01I

AN ACT

To repeal sections 142.800 and 142.803, RSMo, and to enact in lieu thereof two new sections relating to the motor fuel tax.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 142.800 and 142.803, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 142.800 and 142.803, to
3 read as follows:

142.800. As used in this chapter, the following words, terms and phrases
2 have the meanings given:

3 (1) "Agricultural purposes", clearing, terracing or otherwise preparing the
4 ground on a farm; preparing soil for planting and fertilizing, cultivating, raising
5 and harvesting crops; raising and feeding livestock and poultry; building fences;
6 pumping water for any and all uses on the farm, including irrigation; building
7 roads upon any farm by the owner or person farming the same; operating milking
8 machines; sawing wood for use on a farm; producing electricity for use on a farm;
9 movement of tractors, farm implements and nonlicensed equipment from one field
10 to another;

11 (2) "Alternative fuel", electricity, liquefied petroleum gas (LPG or LP gas),
12 compressed natural gas product, or a combination of liquefied petroleum gas and
13 a compressed natural gas or electricity product used in an internal combustion
14 engine or motor to propel any form of vehicle, machine, or mechanical
15 contrivance. It includes all forms of fuel commonly or commercially known or sold
16 as butane, propane, or compressed natural gas;

17 (3) "Aviation fuel", any motor fuel specifically compounded for use in
18 reciprocating aircraft engines;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (4) "Blend stock", any petroleum product component of motor fuel, such
20 as naphtha, reformat, toluene or kerosene, that can be blended for use in a motor
21 fuel without further processing. The term includes those petroleum products
22 presently defined by the Internal Revenue Service in regulations pursuant to 26
23 U.S.C., Sections 4081 and 4082, as amended. However, the term does not include
24 any substance that:

25 (a) Will be ultimately used for consumer nonmotor fuel use; and

26 (b) Is sold or removed in drum quantities (fifty-five gallons) or less at the
27 time of the removal or sale;

28 (5) "Blended fuel", a mixture composed of motor fuel and another liquid
29 including blend stock, other than a de minimis amount of a product such as
30 carburetor detergent or oxidation inhibitor, that can be used as a fuel in a
31 highway vehicle. This term includes but is not limited to gasohol, ethanol,
32 methanol, fuel grade alcohol, diesel fuel enhancers and resulting blends;

33 (6) "Blender", any person that produces blended motor fuel outside the
34 bulk transfer/terminal system;

35 (7) "Blending", the mixing of one or more petroleum products, with or
36 without another product, regardless of the original character of the product
37 blended, if the product obtained by the blending is capable of use or otherwise
38 sold for use in the generation of power for the propulsion of a motor vehicle, an
39 airplane, or a motorboat. The term does not include the blending that occurs in
40 the process of refining by the original refiner of crude petroleum or the blending
41 of products known as lubricating oil and greases;

42 (8) "Bulk plant", a bulk motor fuel storage and distribution facility that
43 is not a terminal within the bulk transfer system and from which motor fuel may
44 be removed by truck;

45 (9) "Bulk transfer", any transfer of motor fuel from one location to another
46 by pipeline tender or marine delivery within the bulk transfer/terminal system;

47 (10) "Bulk transfer/terminal system", the motor fuel distribution system
48 consisting of refineries, pipelines, vessels, and terminals. Motor fuel in a
49 refinery, pipeline, boat, barge or terminal is in the bulk transfer/terminal
50 system. Motor fuel in the fuel supply tank of any engine, or in any tank car, rail
51 car, trailer, truck, or other equipment suitable for ground transportation is not
52 in the bulk transfer/terminal system;

53 (11) "Consumer", the user of the motor fuel;

54 (12) "Delivery", the placing of motor fuel or any liquid into the fuel tank

55 of a motor vehicle or bulk storage facility;

56 (13) "Department", the department of revenue;

57 (14) "Destination state", the state, territory, or foreign country to which
58 motor fuel is directed for delivery into a storage facility, a receptacle, a container,
59 or a type of transportation equipment for the purpose of resale or use;

60 (15) "Diesel fuel", any liquid that is commonly or commercially known or
61 sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A
62 liquid meets this requirement if, without further processing or blending, the
63 liquid has practical and commercial fitness for use in the propulsion engine of a
64 diesel-powered highway vehicle. "Diesel fuel" does not include jet fuel sold to a
65 buyer who is registered with the Internal Revenue Service to purchase jet fuel
66 and remit taxes on its sale or use to the Internal Revenue Service;

67 (16) "Diesel-powered highway vehicle", a motor vehicle operated on a
68 highway that is propelled by a diesel-powered engine;

69 (17) "Director", the director of revenue;

70 (18) "Distributor", a person who either produces, refines, blends,
71 compounds or manufactures motor fuel, imports motor fuel into a state or exports
72 motor fuel out of a state, or who is engaged in distribution of motor fuel;

73 (19) "Dyed fuel", diesel fuel or kerosene that is required to be dyed
74 pursuant to United States Environmental Protection Agency rules or is dyed
75 pursuant to Internal Revenue Service rules or pursuant to any other
76 requirements subsequently set by the United States Environmental Protection
77 Agency or Internal Revenue Service including any invisible marker requirements;

78 (20) **"E85 fuel", a blended fuel of denatured ethanol and**
79 **hydrocarbons that typically contains eighty-five percent ethanol by**
80 **volume and that also complies with ASTM Standard D5798-06;**

81 (21) "Eligible purchaser", a distributor who has been authorized by the
82 director to purchase motor fuel on a tax-deferred basis;

83 [(21)] (22) "Export", to obtain motor fuel in this state for sale or other
84 distribution outside of this state. In applying this definition, motor fuel delivered
85 out of state by or for the seller constitutes an export by the seller, and motor fuel
86 delivered out of state by or for the purchaser constitutes an export by the
87 purchaser;

88 [(22)] (23) "Exporter", any person, other than a supplier, who purchases
89 motor fuel in this state for the purpose of transporting or delivering the fuel
90 outside of this state;

91 [(23)] **(24)** "Farm tractor", all tractor-type, motorized farm implements
92 and equipment but shall not include motor vehicles of the truck-type, pickup
93 truck-type, automobiles, and other motor vehicles required to be registered and
94 licensed each year pursuant to the provisions of the motor vehicle license and
95 registration laws of this state;

96 [(24)] **(25)** "Fuel grade alcohol", a methanol or ethanol with a proof of not
97 less than one hundred ninety degrees (determined without regard to denaturants)
98 and products derived from such alcohol for blending with motor fuel;

99 [(25)] **(26)** "Fuel transportation vehicle", any vehicle designed for
100 highway use which is also designed or used to transport motor fuels and includes
101 transport trucks and tank wagons;

102 [(26)] **(27)** "Gasoline", all products commonly or commercially known or
103 sold as gasoline that are suitable for use as a motor fuel. Gasoline does not
104 include products that have an American Society for Testing and Materials
105 (ASTM) octane number of less than seventy-five as determined by the "motor
106 method";

107 [(27)] **(28)** "Gross gallons", the total measured motor fuel, exclusive of
108 any temperature or pressure adjustments, in U.S. gallons;

109 [(28)] **(29)** "Heating oil", a motor fuel that is burned in a boiler, furnace,
110 or stove for heating or industrial processing purposes;

111 [(29)] **(30)** "Import", to bring motor fuel into this state by any means of
112 conveyance other than in the fuel supply tank of a motor vehicle. In applying
113 this definition, motor fuel delivered into this state from out-of- state by or for the
114 seller constitutes an import by the seller, and motor fuel delivered into this state
115 from out-of-state by or for the purchaser constitutes an import by the purchaser;

116 [(30)] **(31)** "Import verification number", the number assigned by the
117 director with respect to a single transport truck delivery into this state from
118 another state upon request for an assigned number by an importer or the
119 transporter carrying motor fuel into this state for the account of an importer;

120 [(31)] **(32)** "Importer" includes any person who is the importer of record,
121 pursuant to federal customs law, with respect to motor fuel. If the importer of
122 record is acting as an agent, the person for whom the agent is acting is the
123 importer. If there is no importer of record of motor fuel entered into this state,
124 the owner of the motor fuel at the time it is brought into this state is the
125 importer;

126 [(32)] **(33)** "Indian country":

127 (a) Land held in trust by the United States of America for the benefit of
128 a federally recognized Indian tribe or nation;

129 (b) All land within the limits of any Indian reservation under the
130 jurisdiction of the United States government, notwithstanding the issuance of any
131 patent, and including rights-of-way running through the reservation;

132 (c) All dependent Indian communities within the borders of the United
133 States whether within the original or subsequently acquired territory thereof, and
134 whether within or without the limits of a state; and

135 (d) All Indian allotments, the Indian titles to which have not been
136 extinguished, including individual allotments held in trust by the United States
137 or allotments owned in fee by individual Indians subject to federal law
138 restrictions regarding disposition of said allotments and including rights-of-way
139 running through the same. The term shall also include the definition of Indian
140 country as found in 18 U.S.C., Section 1151;

141 [(33)] (34) "Indian tribe", "tribes", or "federally recognized Indian tribe
142 or nation", an Indian tribal entity which is recognized by the United States
143 Bureau of Indian Affairs as having a special relationship with the United
144 States. The term shall also include the definition of a tribe as defined in 25
145 U.S.C., Section 479a;

146 [(34)] (35) "Interstate motor fuel user", any person who operates a motor
147 fuel-powered motor vehicle with a licensed gross weight exceeding twenty-six
148 thousand pounds that travels from this state into another state or from another
149 state into this state;

150 [(35)] (36) "Invoiced gallons", the gallons actually billed on an invoice for
151 payment to a supplier which shall be either gross or net gallons on the original
152 manifest or bill of lading;

153 [(36)] (37) "K-1 kerosene", a petroleum product having an A.P.I. gravity
154 of not less than forty degrees, at a temperature of sixty degrees Fahrenheit and
155 a minimum flash point of one hundred degrees Fahrenheit with a sulfur content
156 not exceeding four one-hundredths percent by weight;

157 [(37)] (38) "Kerosene", the petroleum fraction containing hydrocarbons
158 that are slightly heavier than those found in gasoline and naphtha, with a boiling
159 range of one hundred forty-nine to three hundred degrees Celsius;

160 [(38)] (39) "Liquid", any substance that is liquid in excess of sixty
161 degrees Fahrenheit and at a pressure of fourteen and seven-tenths pounds per
162 square inch absolute;

163 [(39)] **(40)** "Motor fuel", gasoline, diesel fuel, kerosene and blended fuel;
164 [(40)] **(41)** "Motor vehicle", any automobile, truck, truck-tractor or any
165 motor bus or self-propelled vehicle not exclusively operated or driven upon fixed
166 rails or tracks. The term does not include:

167 (a) Farm tractors or machinery including tractors and machinery designed
168 for off-road use but capable of movement on roads at low speeds, or

169 (b) A vehicle solely operated on rails;

170 [(41)] **(42)** "Net gallons", the motor fuel, measured in U.S. gallons, when
171 corrected to a temperature of sixty degrees Fahrenheit and a pressure of fourteen
172 and seven-tenths pounds per square inch absolute (psi);

173 [(42)] **(43)** "Permissive supplier", an out-of-state supplier that elects, but
174 is not required, to have a supplier's license pursuant to this chapter;

175 [(43)] **(44)** "Person", natural persons, individuals, partnerships, firms,
176 associations, corporations, estates, trustees, business trusts, syndicates, this
177 state, any county, city, municipality, school district or other political subdivision
178 of the state, federally recognized Indian tribe, or any corporation or combination
179 acting as a unit or any receiver appointed by any state or federal court;

180 [(44)] **(45)** "Position holder", the person who holds the inventory position
181 in motor fuel in a terminal, as reflected on the records of the terminal operator.
182 A person holds the inventory position in motor fuel when that person has a
183 contract with the terminal operator for the use of storage facilities and
184 terminating services for motor fuel at the terminal. The term includes a terminal
185 operator who owns motor fuel in the terminal;

186 [(45)] **(46)** "Propel", the operation of a motor vehicle, whether it is in
187 motion or at rest;

188 [(46)] **(47)** "Public highway", every road, toll road, highway, street, way
189 or place generally open to the use of the public as a matter of right for the
190 purposes of vehicular travel, including streets and alleys of any town or city
191 notwithstanding that the same may be temporarily closed for construction,
192 reconstruction, maintenance or repair;

193 [(47)] **(48)** "Qualified terminal", a terminal which has been assigned a
194 terminal control number ("tcn") by the Internal Revenue Service;

195 [(48)] **(49)** "Rack", a mechanism for delivering motor fuel from a refinery
196 or terminal into a railroad tank car, a transport truck or other means of bulk
197 transfer outside of the bulk transfer/terminal system;

198 [(49)] **(50)** "Refiner", any person that owns, operates, or otherwise

199 controls a refinery;

200 [(50)] **(51)** "Refinery", a facility used to produce motor fuel from crude oil,
201 unfinished oils, natural gas liquids, or other hydrocarbons and from which motor
202 fuel may be removed by pipeline, by boat or barge, or at a rack;

203 [(51)] **(52)** "Removal", any physical transfer of motor fuel from a
204 terminal, manufacturing plant, customs custody, pipeline, boat or barge, refinery
205 or any facility that stores motor fuel;

206 [(52)] **(53)** "Retailer", a person that engages in the business of selling or
207 dispensing to the consumer within this state;

208 [(53)] **(54)** "Supplier", a person that is:

209 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
210 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
211 system; and

212 (b) One or more of the following:

213 a. The position holder in a terminal or refinery in this state;

214 b. Imports motor fuel into this state from a foreign country;

215 c. Acquires motor fuel from a terminal or refinery in this state from a
216 position holder pursuant to either a two-party exchange or a qualified buy-sell
217 arrangement which is treated as an exchange and appears on the records of the
218 terminal operator; or

219 d. The position holder in a terminal or refinery outside this state with
220 respect to motor fuel which that person imports into this state. A terminal
221 operator shall not be considered a supplier based solely on the fact that the
222 terminal operator handles motor fuel consigned to it within a
223 terminal. "Supplier" also means a person that produces fuel grade alcohol or
224 alcohol-derivative substances in this state, produces fuel grade alcohol or
225 alcohol-derivative substances for import to this state into a terminal, or acquires
226 upon import by truck, rail car or barge into a terminal, fuel grade alcohol or
227 alcohol-derivative substances. "Supplier" includes a permissive supplier unless
228 specifically provided otherwise;

229 [(54)] **(55)** "Tank wagon", a straight truck having multiple compartments
230 designed or used to carry motor fuel;

231 [(55)] **(56)** "Terminal", a bulk storage and distribution facility which
232 includes:

233 (a) For the purposes of motor fuel, is a qualified terminal;

234 (b) For the purposes of fuel grade alcohol, is supplied by truck, rail car,

235 boat, barge or pipeline and the products are removed at a rack;

236 [(56)] (57) "Terminal bulk transfers" include but are not limited to the
237 following:

238 (a) Boat or barge movement of motor fuel from a refinery or terminal to
239 a terminal;

240 (b) Pipeline movements of motor fuel from a refinery or terminal to a
241 terminal;

242 (c) Book transfers of product within a terminal between suppliers prior
243 to completion of removal across the rack; and

244 (d) Two-party exchanges or buy-sell supply arrangements within a
245 terminal between licensed suppliers;

246 [(57)] (58) "Terminal operator", any person that owns, operates, or
247 otherwise controls a terminal. A terminal operator may own the motor fuel that
248 is transferred through or stored in the terminal;

249 [(58)] (59) "Transmix", the buffer or interface between two different
250 products in a pipeline shipment, or a mix of two different products within a
251 refinery or terminal that results in an off-grade mixture;

252 [(59)] (60) "Transport truck", a semitrailer combination rig designed or
253 used to transport motor fuel over the highways;

254 [(60)] (61) "Transporter", any operator of a pipeline, barge, railroad or
255 transport truck engaged in the business of transporting motor fuels;

256 [(61)] (62) "Two-party exchange", a transaction in which the motor fuel
257 is transferred from one licensed supplier or licensed permissive supplier to
258 another licensed supplier or licensed permissive supplier and:

259 (a) Which transaction includes a transfer from the person that holds the
260 original inventory position for motor fuel in the terminal as reflected on the
261 records of the terminal operator; and

262 (b) The exchange transaction is simultaneous with removal from the
263 terminal by the receiving exchange partner. However, in any event, the terminal
264 operator in its books and records treats the receiving exchange party as the
265 supplier which removes the product across a terminal rack for purposes of
266 reporting such events to this state;

267 [(62)] (63) "Ultimate vendor", a person that sells motor fuel to the
268 consumer;

269 [(63)] (64) "Undyed diesel fuel", diesel fuel that is not subject to the
270 United States Environmental Protection Agency dyeing requirements, or has not

271 been dyed in accordance with Internal Revenue Service fuel dyeing provisions;
272 and

273 ~~[(64)]~~ **(65)** "Vehicle fuel tank", any receptacle on a motor vehicle from
274 which fuel is supplied for the propulsion of the motor vehicle.

142.803. 1. A tax is levied and imposed on all motor fuel used or
2 consumed in this state as follows:

3 (1) Motor fuel, **other than E85 fuel**, seventeen cents per gallon;

4 (2) **E85 fuel, twelve cents per gallon;**

5 **(3)** Alternative fuels, not subject to the decal fees as provided in section
6 142.869, with a power potential equivalent of motor fuel. In the event alternative
7 fuel, which is not commonly sold or measured by the gallon, is used in motor
8 vehicles on the highways of this state, the director is authorized to assess and
9 collect a tax upon such alternative fuel measured by the nearest power potential
10 equivalent to that of one gallon of regular grade gasoline. The determination by
11 the director of the power potential equivalent of such alternative fuel shall be
12 prima facie correct;

13 ~~[(3)]~~ **(4)** Aviation fuel used in propelling aircraft with reciprocating
14 engines, nine cents per gallon as levied and imposed by section 155.080, RSMo,
15 to be collected as required under this chapter.

16 2. All taxes, surcharges and fees are imposed upon the ultimate consumer,
17 but are to be precollected as described in this chapter, for the facility and
18 convenience of the consumer. The levy and assessment on other persons as
19 specified in this chapter shall be as agents of this state for the precollection of the
20 tax.

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